Remarks

Applicants thank the Examiner for his provisional allowance of claims 2 and 4-7.

35 U.S.C. §112 Rejection:

Claims 1-7 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention. Applicant respectfully traverses the Examiner's rejection.

Regarding claims 1-4, claims 1-4 have been cancelled. Applicant therefore requests the rejection be withdrawn with respect to claims 1-4.

Regarding claim 5, the Examiner indicates that the applicant's specification requires the inclusion of one or more features to enable the analysis of the contained sample, and further that a feature, which is taught as critical in the specification, should be recited in the claims. Claim 6, which depends from claim 5, and currently amended claim 7 both do not recite a "feature" as an element. Therefore, with respect to claims 5-7, applicant respectfully disagrees with the Examiner's assessment that "one or more features" are "required" by the applicant's disclosure within the presently claimed apparatus for several reasons.

First, with respect to claim 5, the specification discloses that a container includes features, not the apparatus. Second, with respect to claims 5-7, there is no disclosure in the present specification that either the container or the apparatus requires features. On the contrary, the "Disclosure of the Invention" portion of the specification provides how the apparatus is used with a container (page 6, lines 12-20). The container is generally described and does not include or require "features". "In determining whether an unclaimed feature is critical, the entire specification must be considered. Broad language in the disclosure (including the abstract) omitting an allegedly critical feature tends to rebut the argument of criticality." *In re Goffe*, 191 USPQ 429, 432 (CCPA 1976). Clearly, the description of the present apparatus in the "Disclosure" section illustrates that the presently claimed apparatus is not limited to any particular container, and in particular does not require features within a container

or the apparatus. This conclusion is supported in the "Best Mode" portion of the specification, which provides that the "present invention apparatus 10 is preferably used with a particular container 18 for holding a biologic fluid sample for analysis, which is the subject of United States Patent application serial number 09/256,486". "Features which are merely preferred are not critical." *In re Goffe* at 432, citing *In re Armbruster*, 185 USPQ 152 (CCPA 1975).

Hence, there is no requirement that the "features" are either required or are critical, and the Examiner's suggestion that they are critical is rebutted by the present specification. Consequently, applicant respectfully requests the Examiner withdraw this rejection.

35 U.S.C. §102:

Claims 1 and 3 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,281, 540. Claims 1 and 3 are canceled. Consequently, applicants respectfully request this rejection be withdrawn.

In view of the above comments traversing each and every rejection made by the Examiner, applicant respectfully request the present application be passed onto allowance. Enclosed is a check in the amount of $55.00 for one month extension to respond. If it is determined that an additional fee is due, please charge Deposit Account No. 13-0235.

Respectfully submitted,

By _____

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